

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
)  
HOUSTON SPECTRUM ASSOCIATES, L.L.C. )  
)  
Amendment of Part 95 of the Commission's )  
Rules to Provide Flexibility in the 218-219 )  
MHz Service )  
)

WT Docket No. 98-169  
RM-8951

To: The Commission

COMMENTS ON PETITION FOR RECONSIDERATION

Houston Spectrum Associates, L.L.C. ("HSA"), by its attorney, hereby respectfully comments on the Petition for Reconsideration, filed in this proceeding by Celtronix Telemetry, Inc., on December 3, 1999. In support thereof, it is alleged:

1. HSA is a limited liability company, organized under the laws of the State of Georgia. It has a companion company, Boston Spectrum Associates, LLC ("BSA"), which was also organized under Georgia law. BSA owns an IVDS authorization for a system at Boston, Massachusetts, while HSA owns a 49% interest in a system at Houston, Texas, and has rights to acquire, ultimately, the entire system. Additionally, HSA holds (or held) an authorization for a system at Beaumont/Port Arthur, Texas.

2. As the Commission knows, the 218-219 MHz service was originally structured as an interactive video and data service, i.e., a packet radio service designed to allow viewers to talk back to their television sets. If this concept was ever viable, and there are serious questions as to

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whether it ever was, it has long been supplanted by the internet and Web TV. To its credit, the Commission has recognized this and no longer identifies IVDS as a service in its rules. It has been replaced by the 218-219 MHz service.

3. IVDS was, however, actively promoted and hyped by its original developer, EON Corporation, or EON's predecessor in interest, TV Answer, Inc. As a result, when the IVDS service was established by the FCC in 1992 there was a great deal of excitement and promoters moved in to the field. One of these promoters was a man by the name of Bill Brooker, who operated through a company known as Trend Star, Ltd. Trend Star organized HSA and BSA. Equity interests in these two companies were sold to investors, with Trend Star retaining 35%, or approximately \$6300 out of each \$18,000 investment package, as "promotional fees". The companies engaged an IVDS consultant, Joe Balch, to manage their IVDS operations. In early 1995 Mr. Balch advised the companies that two of the winners of the original IVDS lottery were interested in selling their licenses. As a result of this advice, BSA purchased the Boston license for \$750,000. HSA in turn purchased an interest in the Houston license with rights ultimately to acquire the entire license. Finally, HSA paid \$50,000 to the holder of the license at Beaumont, Texas, for the holder's rights to the Beaumont license. That license, however, was not free and clear. It had been purchased from the FCC on the installment plan and installments remain to be paid.

4. As a result of these various investments and the construction of demonstration systems, the companies have an investment in IVDS in the sum of at least \$2,475,000. Mr. Brooker is long since gone, and so is Mr. Balch. These days, the companies are managed, essentially, by the people who put up the money.

5. The companies appreciate the efforts that the Commission has made to assist them

in salvaging at least a part of their investment. However, there is more that the Commission could do without doing any harm to the taxpayers or to the public interest. On January 21, 2000, an item was published in the Federal Register<sup>1</sup>, advising the public that petitions for reconsideration had been filed by a number of companies, directed to the Commission's Report and Order and Memorandum Opinion and Order (the "Order"), released on September 10, 1999, FCC 99-239, in the above-captioned matter. In that Order, the Commission provided that certain licensees would be eligible to restructure and to use their down payments as credits against payments due in future auctions. One of the petitions for reconsideration referred to in the notice published in the Federal Register (the Celtronix petition) seeks reconsideration of the Commission's decision not to refund any portion of the down payment to IVDS licensees electing the amnesty option.<sup>2</sup>

6. To the extent that Celtronix suggests that the down payment should be returned, HSA and BSA whole-heartedly agree, and support the Petition. To its great credit, the Commission has recognized that IVDS just did not work out and has also recognized, implicitly, that innocent investors, such as the investors in BSA and HSA, were victimized by slick promoters. The least the Commission can do is to return down payments where an IVDS licensee elects to turn in its license. Failing that, however, we have another suggestion: the down payment could be credited against future auctions in other services, e.g., the broadcast service. Auctions in these other services are expected to produce many billions of dollars in revenues, because the licenses being sold are so valuable. The Commission could issue vouchers to IVDS licensees who turn in their licenses, equivalent to the value of all principal and interest payments made to the government and freely

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<sup>1</sup>65 FR 3451.

<sup>2</sup>Petition of Celtronix Telemetry, Inc. at page 4.

transferable to any person or company who desires to participate in a future spectrum auction of any kind. Such a procedure would not require any cash outlay whatsoever on the part of the government. The government would simply keep what it has already been paid, but allow it to be credited against payments required by future auctions.

7. HSA has been advised by the FCC staff that it is not eligible for restructuring, because it did not specifically request a stay of certain required payments. HSA believes that the staff may be in error, because it has located internal records which show that it kept making interest payments until its accountants indicated that the payments had been stayed by an FCC order. Several times in 1999, counsel for HSA made diligent efforts to determine whether any payments were due on the Beaumont license but, despite intensive search on the Web and telephone communications with FCC officials, counsel was unable to elicit any information to show that any payments were due. To the contrary, a search of the WTB database shows that the license was apparently in good standing. At the time, counsel also attempted to change the address of the licensee electronically, to insure that any correspondence would promptly reach the licensee. Once again, however, that effort was unsuccessful. The Universal Licensing System accepted a registration of the license, but would not accept a change of address.

8. Whatever the case, however, it makes no sense to draw fine distinctions between licensees based upon whether a licensee has specifically requested a stay or whether it simply relied upon a blanket payment suspension issued by the FCC. Where, as here, HSA has made a substantial down payment and numerous payments of interest, stopping only when its accountants advised that they were no longer necessary, it makes no sense to exclude HSA from eligibility for restructuring. If HSA is eligible for restructuring, it should have the same options available as everybody else who

was eligible. Those options should include the right to turn in the license and get back the down payment and interest payments and/or be issued vouchers, good for a sum of money equal to these payments, in any future FCC auction.

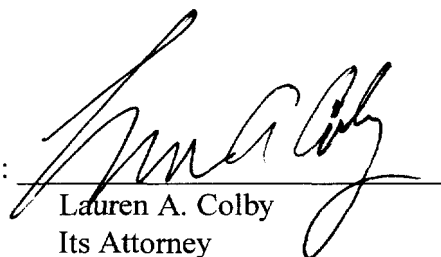
Respectfully submitted,

February 4, 2000

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By:

  
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CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 4<sup>th</sup> day of February, 2000, to the offices of the following:

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